PHFA
PENNSYLVANIA HOUSING FINANCE AGENCY

VIA ELECTRONIC DELIVERY

January 6, 2017

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Robert deV. Frierson, Secretary
Board of Governors of the Federal Reserve System
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Robert E. Feldman, Executive Secretary
Attention: Comments/Legal ESS
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Barry F. Mardock, Deputy Director
Office of Regulatory Policy
Farm Credit Administration
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Gerard S. Poliquin, Secretary of the Board
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1775 Duke Street
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Re: Loans in Areas Having Special Flood Hazards—Private Flood Insurance
81 Fed. Reg. 78063 (Nov. 7, 2016) — Docket ID OCC–2016–0005; Docket No. R-1549
RIN 1557–AD67; RIN 7100–AE60; RIN 3064–AE50; RIN 3052–AD11; RIN 3133–AE64

Ladies and Gentlemen:

The Pennsylvania Housing Finance Agency ("PHFA") respectfully submits this letter to the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Farm Credit Administration and the National Credit Union Administration (collectively, the "Prudential Regulators") in response to the request for comments in the recently published proposed rule, Loans in Areas Having Special Flood Hazards—Private Flood Insurance, 81 Fed. Reg. 78063 (Nov. 7, 2016).

PHFA is a public corporation and instrumentality of government created by the Commonwealth of Pennsylvania to provide Pennsylvanians of modest means or specialized needs with access to safe, affordable housing opportunities. As a state Housing Finance Agency ("HFA"), we are accountable to our constituents, to elected officials, and to an uncompensated board of directors. PHFA provides funding for and services more than fifty thousand single-family mortgage loans, which are held in portfolio or are securitized in Fannie Mae or Ginnie Mae securities.

As a mission-driven organization, PHFA specifically tailors its consumer programs to address the needs of low- and moderate-income people throughout Pennsylvania. Our programs benefit households in underserved rural communities and also assist with the remediation of code violations in urban centers. We offer energy efficiency and repair loans, rehabilitation loans for manufactured housing, employer assistance program loans, closing cost assistance and down payment programs for first time homebuyers as well as closing cost assistance, down payment assistance and home accessibility modification loans to homebuyers with disabilities. We also offer no-cost housing counseling to consumers through a network of nonprofit counseling agencies, funded through a variety of state and federal grants as well as private sources. As an HFA and a mission-driven organization, PHFA respectfully submits the following comments to the proposal.

This rulemaking is technically only applicable to lenders regulated by the Prudential Regulators. However, because these regulated entities originate most mortgage loans, the rulemaking will have an impact on the activities of nearly every entity participating in mortgage lending, including mortgage brokers, mortgage servicers, nonprofit organizations like Habitat for Humanity, state HFAs, government sponsored entities and investors in mortgage backed securities.

We applaud the goal of developing a robust private flood insurance program. However, prior to adopting these wholesale changes to the current marketplace, we encourage the Prudential Regulators to consult with the Federal Emergency Management Agency ("FEMA") in crafting objective standards for evaluating policy forms and crafting policies complementary to FEMA's National Flood Insurance Program ("NFIP"). Further study concerning acceptable deductible levels, cancellation policies, claims, claim escalation and regional disparities in private market coverage and pricing levels remains necessary.

The proposal has a worthy goal of trying to encourage the expansion and use of private flood insurance to complement and supplement the NFIP to create opportunities for consumers to choose policies in a competitive market. However, the proposal does not yet contain provisions to adequately protect the interests of consumers and investors. Consumer protection is of concern as we want to ensure that consumers have adequate information, access to quality insurance products and responsive private sector programs.

Further, we encourage careful study of the impact this new private insurance model may have on the continued viability of the NFIP. We also urge special attention to the impact of the rulemaking on affordability and stability in housing markets, with a focus on the availability of housing stock for low- and moderate-income buyers. Many financially distressed communities are located along lakes, streams and rivers, as the availability of water was instrumental for the growth of industries which once allowed distressed communities to thrive and grow. As such, affordable homes built for workers in milltowns are often located in flood zones, while less affordable housing stock was built on higher ground.

While profit-driven entities like private investors impose common-sense requirements to protect their security interest in a property, mission-driven organizations (such as nonprofit lenders and HFAs) often have their own minimum standards for insurance policies to ensure consumers have sufficient coverage to recover from a loss. As written, the proposal focuses on ensuring the safety and soundness of regulated lenders, but does not adequately consider the potential effect of the proposal on consumers.

As the Center for Economic Justice, the Consumer Federation of America, Greater New Orleans Fair Housing Action Center, the National Association of Consumer Advocates, the National Consumer Law Center and the National Fair Housing Alliance stated in their joint comments to the original proposal, "The Agencies should not relax the rules further in an attempt to encourage private flood insurance. Private flood insurance that does not meet [the statutory] minimum standards is likely to lead to abuse of homeowners." Page 4 (submitted December 10, 2013). To protect consumers, we suggest the Prudential Regulators eliminate the discretionary acceptance of private polices which do not meet the minimum statutory requirements. Alternatively, we encourage the Prudential Regulators to consult with FEMA to ensure that the "similar to" standard for discretionary acceptance of policies contains provisions to allow for a more objective determination of whether a private policy provides comparable coverage to a Standard Flood Insurance Policy, to ensure consumers' interests in their homes are protected.

We encourage the Prudential Regulators to cooperate with FEMA to adopt a process for establishing "safe harbor" policies as outlined by the National Association of Insurance Commissioners ("NAIC") in its comments to the October 2013 proposal:

- State insurance regulators, working through the NAIC, would collaborate with federal banking regulators and [FEMA] to develop a list of acceptable minimum standards for a private flood insurance policy consistent with the definition in the Act.
- Federal banking regulators would require lenders to only accept private flood insurance policy forms that have been filed with the state insurance regulator where the property is located, regardless if the policy is sold in the admitted or nonadmitted market (surplus lines). Such filings would include a cover sheet (checklist) that would detail how the insurer's policy form meets the minimum standards using citations and references.
- After reviewing the policy form and checklist, if the state insurance regulator believes that the policy form may not meet the definition in the Act consistent with the list of minimum standards referenced above, then the state insurance regulator would advise the federal banking regulators who would make a determination to take any action related to its lenders' acceptance of the policy.

NAIC Comments, Page 2 (submitted December 23, 2013).

Thank you for your time and your consideration of these comments. Please feel free to contact me at rpeace@phfa.org if I can answer any questions or provide any additional clarifications regarding our comments on the Proposal.

Sincerely,

Rebecca L. Peace
Deputy Executive Director and Chief Counsel